

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL CASE NO. 3:07cv495

GARY E. SULLIVAN,

Plaintiff,

vs.

MARTIN H. MALIN, Chairman
SBA 928, National Mediation
Board, Chicago, Il., and
NATIONAL RAILROAD
PASSENGER CORP.,

Defendants.

ORDER

THIS MATTER is before the Court *sua sponte* to provide Plaintiff with notice pursuant to Federal Rule of Civil Procedure 4(m).

On November 20, 2007, the Plaintiff initiated this action by filing a complaint against Martin Malin. [Doc. 1]. On March 6, 2008, the Plaintiff filed an Amended Complaint which added National Railroad Passenger Corp. as a Defendant. [Doc. 3].

To date, the Plaintiff has not filed proof of service. It may be that the Plaintiff assumes that the filing of an amended complaint naming a new

defendant starts anew the 120 day period within which service must be effected as to the original defendant pursuant to Federal Rule of Civil Procedure 4. However, “the 120-day period provided by Rule 4(m) is not restarted by the filing of an amended complaint except as to those defendants newly added in the amended complaint.” Bolden v. City of Topeka, Kan., 441 F.3d 1129, 1148 (10th Cir. 2006); Yongo v. Nationwide Affinity Ins. Co. Of America, 2008 WL 516744 (E.D.N.C. 2008). The Plaintiff has failed to effect service on Defendant Malin within the 120 day period from November 20, 2007.

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed.R.Civ.P. Rule 4(m).

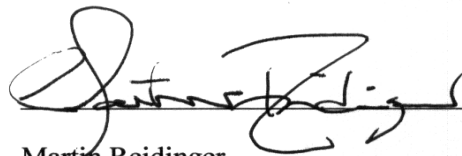
Plaintiff is hereby placed on notice that unless good cause is shown for the failure to effect service of the summons and complaint on Defendant Malin, this action shall be dismissed as to him without prejudice without further order.

IT IS, THEREFORE, ORDERED that the Plaintiff shall show good cause within fifteen (15) days of service of this Order for the failure to effect service on Defendant Malin.

IT IS FURTHER ORDERED that failure of the Plaintiff to respond in writing within fifteen (15) days shall result in a dismissal without prejudice of this action as to Defendant Malin without further court order.

IT IS FURTHER ORDERED that the Plaintiff is hereby advised that he must effect service on Defendant National Railroad Passenger Corp. on or before 120 days from the filing of the Amended Complaint.

Signed: March 20, 2008


Martin Reidinger
United States District Judge

